

SENATE, No. 3060

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED SEPTEMBER 22, 2011

Sponsored by:

Senator DIANE B. ALLEN

District 7 (Burlington and Camden)

Senator THOMAS H. KEAN, JR.

District 21 (Essex, Morris, Somerset and Union)

SYNOPSIS

Expands civil rights protections to include pregnancy and breast-feeding;
requires employers to provide daily break to breast-feeding mothers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning pregnancy and breast-feeding in the workplace,
2 amending P.L.1945, c.169 and supplementing chapter 2 of Title
3 34 of the Revised Statutes.

4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7

8 1. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to read
9 as follows:

10 11. It shall be an unlawful employment practice, or, as the case
11 may be, an unlawful discrimination:

12 a. For an employer, because of the race, creed, color, national
13 origin, ancestry, age, marital status, domestic partnership status,
14 affectional or sexual orientation, genetic information, sex, disability
15 or atypical hereditary cellular or blood trait of any individual, or
16 because of the liability for service in the Armed Forces of the
17 United States or the nationality of any individual, or because of the
18 refusal to submit to a genetic test or make available the results of a
19 genetic test to an employer, or on the basis of pregnancy, childbirth,
20 breast-feeding or expressing milk or related medical conditions, to
21 refuse to hire or employ or to bar or to discharge or require to retire,
22 unless justified by lawful considerations other than age, from
23 employment such individual or to discriminate against such
24 individual in compensation or in terms, conditions or privileges of
25 employment; provided, however, it shall not be an unlawful
26 employment practice to refuse to accept for employment an
27 applicant who has received a notice of induction or orders to report
28 for active duty in the armed forces; provided further that nothing
29 herein contained shall be construed to bar an employer from
30 refusing to accept for employment any person on the basis of sex in
31 those certain circumstances where sex is a bona fide occupational
32 qualification, reasonably necessary to the normal operation of the
33 particular business or enterprise; provided further that nothing
34 herein contained shall be construed to bar an employer from
35 refusing to accept for employment or to promote any person over 70
36 years of age; provided further that it shall not be an unlawful
37 employment practice for a club exclusively social or fraternal to use
38 club membership as a uniform qualification for employment, or for
39 a religious association or organization to utilize religious affiliation
40 as a uniform qualification in the employment of clergy, religious
41 teachers or other employees engaged in the religious activities of
42 the association or organization, or in following the tenets of its
43 religion in establishing and utilizing criteria for employment of an
44 employee; provided further, that it shall not be an unlawful
45 employment practice to require the retirement of any employee

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 who, for the two-year period immediately before retirement, is
2 employed in a bona fide executive or a high policy-making position,
3 if that employee is entitled to an immediate non-forfeitable annual
4 retirement benefit from a pension, profit sharing, savings or
5 deferred retirement plan, or any combination of those plans, of the
6 employer of that employee which equals in the aggregate at least
7 \$27,000.00; and provided further that an employer may restrict
8 employment to citizens of the United States where such restriction
9 is required by federal law or is otherwise necessary to protect the
10 national interest.

11 The provisions of subsections a. and b. of section 57 of
12 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of
13 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an
14 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

15 For the purposes of this subsection, a "bona fide executive" is a
16 top level employee who exercises substantial executive authority
17 over a significant number of employees and a large volume of
18 business. A "high policy-making position" is a position in which a
19 person plays a significant role in developing policy and in
20 recommending the implementation thereof.

21 b. For a labor organization, because of the race, creed, color,
22 national origin, ancestry, age, marital status, domestic partnership
23 status, affectional or sexual orientation, disability or sex of any
24 individual, or because of the liability for service in the Armed
25 Forces of the United States or nationality of any individual, or on
26 the basis of pregnancy, childbirth, breast-feeding or expressing milk
27 or related medical conditions, to exclude or to expel from its
28 membership such individual or to discriminate in any way against
29 any of its members, against any applicant for, or individual included
30 in, any apprentice or other training program or against any
31 employer or any individual employed by an employer; provided,
32 however, that nothing herein contained shall be construed to bar a
33 labor organization from excluding from its apprentice or other
34 training programs any person on the basis of sex in those certain
35 circumstances where sex is a bona fide occupational qualification
36 reasonably necessary to the normal operation of the particular
37 apprentice or other training program.

38 c. For any employer or employment agency to print or circulate
39 or cause to be printed or circulated any statement, advertisement or
40 publication, or to use any form of application for employment, or to
41 make an inquiry in connection with prospective employment, which
42 expresses, directly or indirectly, any limitation, specification or
43 discrimination as to race, creed, color, national origin, ancestry,
44 age, marital status, domestic partnership status, affectional or sexual
45 orientation, disability, nationality or sex or liability of any applicant
46 for employment for service in the Armed Forces of the United
47 States, or on the basis of pregnancy, childbirth, breast-feeding or
48 expressing milk or related medical conditions, or any intent to make

1 any such limitation, specification or discrimination, unless based
2 upon a bona fide occupational qualification.

3 d. For any person to take reprisals against any person because
4 that person has opposed any practices or acts forbidden under this
5 act or because that person has filed a complaint, testified or assisted
6 in any proceeding under this act or to coerce, intimidate, threaten or
7 interfere with any person in the exercise or enjoyment of, or on
8 account of that person having aided or encouraged any other person
9 in the exercise or enjoyment of, any right granted or protected by
10 this act.

11 e. For any person, whether an employer or an employee or not,
12 to aid, abet, incite, compel or coerce the doing of any of the acts
13 forbidden under this act, or to attempt to do so.

14 f. (1) For any owner, lessee, proprietor, manager, superintendent,
15 agent, or employee of any place of public accommodation directly
16 or indirectly to refuse, withhold from or deny to any person any of
17 the accommodations, advantages, facilities or privileges thereof, or
18 to discriminate against any person in the furnishing thereof, or
19 directly or indirectly to publish, circulate, issue, display, post or
20 mail any written or printed communication, notice, or advertisement
21 to the effect that any of the accommodations, advantages, facilities,
22 or privileges of any such place will be refused, withheld from, or
23 denied to any person on account of the race, creed, color, national
24 origin, ancestry, marital status, domestic partnership status, sex,
25 affectional or sexual orientation, disability or nationality of such
26 person, or that the patronage or custom thereof of any person of any
27 particular race, creed, color, national origin, ancestry, marital status,
28 domestic partnership status, sex, affectional or sexual orientation,
29 disability or nationality is unwelcome, objectionable or not
30 acceptable, desired or solicited, and the production of any such
31 written or printed communication, notice or advertisement,
32 purporting to relate to any such place and to be made by any owner,
33 lessee, proprietor, superintendent or manager thereof, shall be
34 presumptive evidence in any action that the same was authorized by
35 such person; provided, however, that nothing contained herein shall
36 be construed to bar any place of public accommodation which is in
37 its nature reasonably restricted exclusively to individuals of one
38 sex, and which shall include but not be limited to any summer
39 camp, day camp, or resort camp, bathhouse, dressing room,
40 swimming pool, gymnasium, comfort station, dispensary, clinic or
41 hospital, or school or educational institution which is restricted
42 exclusively to individuals of one sex, from refusing, withholding
43 from or denying to any individual of the opposite sex any of the
44 accommodations, advantages, facilities or privileges thereof on the
45 basis of sex; provided further, that the foregoing limitation shall not
46 apply to any restaurant as defined in R.S.33:1-1 or place where
47 alcoholic beverages are served.

48 (2) Notwithstanding the definition of "public accommodation"

1 as set forth in subsection l. of section 5 of P.L.1945, c.169 (C.10:5-
2 5), for any owner, lessee, proprietor, manager, superintendent,
3 agent, or employee of any private club or association to directly or
4 indirectly refuse, withhold from or deny to any individual who has
5 been accepted as a club member and has contracted for or is
6 otherwise entitled to full club membership any of the
7 accommodations, advantages, facilities or privileges thereof, or to
8 discriminate against any member in the furnishing thereof on
9 account of the race, creed, color, national origin, ancestry, marital
10 status, domestic partnership status, sex, affectional or sexual
11 orientation, disability or nationality of such person.

12 In addition to the penalties otherwise provided for a violation of
13 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
14 of subsection f. of this section is the holder of an alcoholic beverage
15 license issued under the provisions of R.S.33:1-12 for that private
16 club or association, the matter shall be referred to the Director of
17 the Division of Alcoholic Beverage Control who shall impose an
18 appropriate penalty in accordance with the procedures set forth in
19 R.S.33:1-31.

20 g. For any person, including but not limited to, any owner,
21 lessee, sublessee, assignee or managing agent of, or other person
22 having the right of ownership or possession of or the right to sell,
23 rent, lease, assign, or sublease any real property or part or portion
24 thereof, or any agent or employee of any of these:

25 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
26 to deny to or withhold from any person or group of persons any real
27 property or part or portion thereof because of race, creed, color,
28 national origin, ancestry, marital status, domestic partnership status,
29 sex, affectional or sexual orientation, familial status, disability,
30 nationality, or source of lawful income used for rental or mortgage
31 payments;

32 (2) To discriminate against any person or group of persons
33 because of race, creed, color, national origin, ancestry, marital
34 status, domestic partnership status, sex, affectional or sexual
35 orientation, familial status, disability, nationality or source of
36 lawful income used for rental or mortgage payments in the terms,
37 conditions or privileges of the sale, rental or lease of any real
38 property or part or portion thereof or in the furnishing of facilities
39 or services in connection therewith;

40 (3) To print, publish, circulate, issue, display, post or mail, or
41 cause to be printed, published, circulated, issued, displayed, posted
42 or mailed any statement, advertisement, publication or sign, or to
43 use any form of application for the purchase, rental, lease,
44 assignment or sublease of any real property or part or portion
45 thereof, or to make any record or inquiry in connection with the
46 prospective purchase, rental, lease, assignment, or sublease of any
47 real property, or part or portion thereof which expresses, directly or
48 indirectly, any limitation, specification or discrimination as to race,

1 creed, color, national origin, ancestry, marital status, domestic
2 partnership status, sex, affectional or sexual orientation, familial
3 status, disability, nationality, or source of lawful income used for
4 rental or mortgage payments, or any intent to make any such
5 limitation, specification or discrimination, and the production of
6 any such statement, advertisement, publicity, sign, form of
7 application, record, or inquiry purporting to be made by any such
8 person shall be presumptive evidence in any action that the same
9 was authorized by such person; provided, however, that nothing
10 contained in this subsection shall be construed to bar any person
11 from refusing to sell, rent, lease, assign or sublease or from
12 advertising or recording a qualification as to sex for any room,
13 apartment, flat in a dwelling or residential facility which is planned
14 exclusively for and occupied by individuals of one sex to any
15 individual of the exclusively opposite sex on the basis of sex;

16 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
17 to deny to or withhold from any person or group of persons any real
18 property or part or portion thereof because of the source of any
19 lawful income received by the person or the source of any lawful
20 rent payment to be paid for the real property; or

21 (5) To refuse to rent or lease any real property to another person
22 because that person's family includes children under 18 years of
23 age, or to make an agreement, rental or lease of any real property
24 which provides that the agreement, rental or lease shall be rendered
25 null and void upon the birth of a child. This paragraph shall not
26 apply to housing for older persons as defined in subsection mm. of
27 section 5 of P.L.1945, c.169 (C.10:5-5).

28 h. For any person, including but not limited to, any real estate
29 broker, real estate salesperson, or employee or agent thereof:

30 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
31 sale, rental, lease, assignment, or sublease any real property or part
32 or portion thereof to any person or group of persons or to refuse to
33 negotiate for the sale, rental, lease, assignment, or sublease of any
34 real property or part or portion thereof to any person or group of
35 persons because of race, creed, color, national origin, ancestry,
36 marital status, domestic partnership status, familial status, sex,
37 affectional or sexual orientation, disability, nationality, or source of
38 lawful income used for rental or mortgage payments, or to represent
39 that any real property or portion thereof is not available for
40 inspection, sale, rental, lease, assignment, or sublease when in fact
41 it is so available, or otherwise to deny or withhold any real property
42 or any part or portion of facilities thereof to or from any person or
43 group of persons because of race, creed, color, national origin,
44 ancestry, marital status, domestic partnership status, familial status,
45 sex, affectional or sexual orientation, disability or nationality;

46 (2) To discriminate against any person because of race, creed,
47 color, national origin, ancestry, marital status, domestic partnership
48 status, familial status, sex, affectional or sexual orientation,

1 disability, nationality, or source of lawful income used for rental or
2 mortgage payments in the terms, conditions or privileges of the
3 sale, rental, lease, assignment or sublease of any real property or
4 part or portion thereof or in the furnishing of facilities or services in
5 connection therewith;

6 (3) To print, publish, circulate, issue, display, post, or mail, or
7 cause to be printed, published, circulated, issued, displayed, posted
8 or mailed any statement, advertisement, publication or sign, or to
9 use any form of application for the purchase, rental, lease,
10 assignment, or sublease of any real property or part or portion
11 thereof or to make any record or inquiry in connection with the
12 prospective purchase, rental, lease, assignment, or sublease of any
13 real property or part or portion thereof which expresses, directly or
14 indirectly, any limitation, specification or discrimination as to race,
15 creed, color, national origin, ancestry, marital status, domestic
16 partnership status, familial status, sex, affectional or sexual
17 orientation, disability, nationality, or source of lawful income used
18 for rental or mortgage payments or any intent to make any such
19 limitation, specification or discrimination, and the production of
20 any such statement, advertisement, publicity, sign, form of
21 application, record, or inquiry purporting to be made by any such
22 person shall be presumptive evidence in any action that the same
23 was authorized by such person; provided, however, that nothing
24 contained in this subsection h., shall be construed to bar any person
25 from refusing to sell, rent, lease, assign or sublease or from
26 advertising or recording a qualification as to sex for any room,
27 apartment, flat in a dwelling or residential facility which is planned
28 exclusively for and occupied exclusively by individuals of one sex
29 to any individual of the opposite sex on the basis of sex;

30 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
31 to deny to or withhold from any person or group of persons any real
32 property or part or portion thereof because of the source of any
33 lawful income received by the person or the source of any lawful
34 rent payment to be paid for the real property; or

35 (5) To refuse to rent or lease any real property to another person
36 because that person's family includes children under 18 years of
37 age, or to make an agreement, rental or lease of any real property
38 which provides that the agreement, rental or lease shall be rendered
39 null and void upon the birth of a child. This paragraph shall not
40 apply to housing for older persons as defined in subsection mm. of
41 section 5 of P.L.1945, c.169 (C.10:5-5).

42 i. For any person, bank, banking organization, mortgage
43 company, insurance company or other financial institution, lender
44 or credit institution involved in the making or purchasing of any
45 loan or extension of credit, for whatever purpose, whether secured
46 by residential real estate or not, including but not limited to
47 financial assistance for the purchase, acquisition, construction,
48 rehabilitation, repair or maintenance of any real property or part or

1 portion thereof or any agent or employee thereof:

2 (1) To discriminate against any person or group of persons
3 because of race, creed, color, national origin, ancestry, marital
4 status, domestic partnership status, sex, affectional or sexual
5 orientation, disability, familial status or nationality, in the granting,
6 withholding, extending, modifying, renewing, or purchasing, or in
7 the fixing of the rates, terms, conditions or provisions of any such
8 loan, extension of credit or financial assistance or purchase thereof
9 or in the extension of services in connection therewith;

10 (2) To use any form of application for such loan, extension of
11 credit or financial assistance or to make record or inquiry in
12 connection with applications for any such loan, extension of credit
13 or financial assistance which expresses, directly or indirectly, any
14 limitation, specification or discrimination as to race, creed, color,
15 national origin, ancestry, marital status, domestic partnership status,
16 sex, affectional or sexual orientation, disability, familial status or
17 nationality or any intent to make any such limitation, specification
18 or discrimination; unless otherwise required by law or regulation to
19 retain or use such information;

20 (3) (Deleted by amendment, P.L.2003, c.180).

21 (4) To discriminate against any person or group of persons
22 because of the source of any lawful income received by the person
23 or the source of any lawful rent payment to be paid for the real
24 property; or

25 (5) To discriminate against any person or group of persons
26 because that person's family includes children under 18 years of
27 age, or to make an agreement or mortgage which provides that the
28 agreement or mortgage shall be rendered null and void upon the
29 birth of a child. This paragraph shall not apply to housing for older
30 persons as defined in subsection mm. of section 5 of P.L.1945,
31 c.169 (C.10:5-5).

32 j. For any person whose activities are included within the scope
33 of this act to refuse to post or display such notices concerning the
34 rights or responsibilities of persons affected by this act as the
35 Attorney General may by regulation require.

36 k. For any real estate broker, real estate salesperson or employee
37 or agent thereof or any other individual, corporation, partnership, or
38 organization, for the purpose of inducing a transaction for the sale
39 or rental of real property from which transaction such person or any
40 of its members may benefit financially, to represent that a change
41 has occurred or will or may occur in the composition with respect to
42 race, creed, color, national origin, ancestry, marital status, domestic
43 partnership status, familial status, sex, affectional or sexual
44 orientation, disability, nationality, or source of lawful income used
45 for rental or mortgage payments of the owners or occupants in the
46 block, neighborhood or area in which the real property is located,
47 and to represent, directly or indirectly, that this change will or may
48 result in undesirable consequences in the block, neighborhood or

1 area in which the real property is located, including, but not limited
2 to the lowering of property values, an increase in criminal or anti-
3 social behavior, or a decline in the quality of schools or other
4 facilities.

5 1. For any person to refuse to buy from, sell to, lease from or to,
6 license, contract with, or trade with, provide goods, services or
7 information to, or otherwise do business with any other person on
8 the basis of the race, creed, color, national origin, ancestry, age,
9 sex, affectional or sexual orientation, marital status, domestic
10 partnership status, liability for service in the Armed Forces of the
11 United States, disability, nationality, or source of lawful income
12 used for rental or mortgage payments of such other person or of
13 such other person's spouse, partners, members, stockholders,
14 directors, officers, managers, superintendents, agents, employees,
15 business associates, suppliers, or customers. This subsection shall
16 not prohibit refusals or other actions (1) pertaining to employee-
17 employer collective bargaining, labor disputes, or unfair labor
18 practices, or (2) made or taken in connection with a protest of
19 unlawful discrimination or unlawful employment practices.

20 m. For any person to:

21 (1) Grant or accept any letter of credit or other document which
22 evidences the transfer of funds or credit, or enter into any contract
23 for the exchange of goods or services, where the letter of credit,
24 contract, or other document contains any provisions requiring any
25 person to discriminate against or to certify that he, she or it has not
26 dealt with any other person on the basis of the race, creed, color,
27 national origin, ancestry, age, sex, affectional or sexual orientation,
28 marital status, domestic partnership status, disability, liability for
29 service in the Armed Forces of the United States, or nationality of
30 such other person or of such other person's spouse, partners,
31 members, stockholders, directors, officers, managers,
32 superintendents, agents, employees, business associates, suppliers,
33 or customers.

34 (2) Refuse to grant or accept any letter of credit or other
35 document which evidences the transfer of funds or credit, or refuse
36 to enter into any contract for the exchange of goods or services, on
37 the ground that it does not contain such a discriminatory provision
38 or certification.

39 The provisions of this subsection shall not apply to any letter of
40 credit, contract, or other document which contains any provision
41 pertaining to employee-employer collective bargaining, a labor
42 dispute or an unfair labor practice, or made in connection with the
43 protest of unlawful discrimination or an unlawful employment
44 practice, if the other provisions of such letter of credit, contract, or
45 other document do not otherwise violate the provisions of this
46 subsection.

47 n. For any person to aid, abet, incite, compel, coerce, or induce
48 the doing of any act forbidden by subsections l. and m. of section

1 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
2 do so. Such prohibited conduct shall include, but not be limited to:

3 (1) Buying from, selling to, leasing from or to, licensing,
4 contracting with, trading with, providing goods, services, or
5 information to, or otherwise doing business with any person
6 because that person does, or agrees or attempts to do, any such act
7 or any act prohibited by this subsection; or

8 (2) Boycotting, commercially blacklisting or refusing to buy
9 from, sell to, lease from or to, license, contract with, provide goods,
10 services or information to, or otherwise do business with any person
11 because that person has not done or refuses to do any such act or
12 any act prohibited by this subsection; provided that this subsection
13 shall not prohibit refusals or other actions either pertaining to
14 employee-employer collective bargaining, labor disputes, or unfair
15 labor practices, or made or taken in connection with a protest of
16 unlawful discrimination or unlawful employment practices.

17 o. For any multiple listing service, real estate brokers'
18 organization or other service, organization or facility related to the
19 business of selling or renting dwellings to deny any person access
20 to or membership or participation in such organization, or to
21 discriminate against such person in the terms or conditions of such
22 access, membership, or participation, on account of race, creed,
23 color, national origin, ancestry, age, marital status, domestic
24 partnership status, familial status, sex, affectional or sexual
25 orientation, disability or nationality.

26 (cf: P.L.2003, c.246, s.12)

27

28 2. (New section) An employer, including the State and any
29 political subdivision, shall provide reasonable break time each day
30 to an employee, as needed, for the employee to express breast milk
31 for her infant child. An employer is not required to provide break
32 time under this section if to do so would unduly disrupt the
33 employer's operations.

34

35 3. (New section) An employer shall make reasonable efforts to
36 provide a room or other location, in close proximity to the work
37 area, other than a toilet stall, where the employee can express her
38 milk in privacy. The room or location may include the place where
39 the employee normally works if it otherwise meets the requirements
40 of this section.

41

42 4. (New section) It shall be an unlawful practice for an
43 employer to violate any provisions of sections 2 or 3 of this act. An
44 employer who violates the provisions of sections 2 or 3 of this act
45 shall be liable to a civil penalty of not less than \$500 for the first
46 violation, not less than \$750 for the second violation, and not less
47 than \$1,000 for the third and each subsequent violation. The civil
48 penalty shall be collected pursuant to the "Penalty Enforcement

1 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary
2 proceeding before the municipal court having jurisdiction. An
3 official authorized by statute or ordinance to enforce the State or
4 local health codes or a law enforcement officer having enforcement
5 authority in that municipality may issue a summons for a violation
6 of the provisions of sections 2 or 3 of this act, and may serve and
7 execute all process with respect to the enforcement of this section
8 consistent with the Rules of Court of the State of New Jersey. A
9 penalty recovered under the provisions of this section shall be
10 recovered by and in the name of the State by the local health
11 agency. The penalty shall be paid into the treasury of the
12 municipality in which the violation occurred for the general uses of
13 the municipality.

14

15 5. This act shall take effect 90 days after enactment.

16

17

18

STATEMENT

19

20 This bill expands certain civil rights protections under the "Law
21 Against Discrimination" P.L.1945, c.169 (C.10:5-1 et seq.) to
22 include pregnancy, childbirth, breast-feeding or expressing milk or
23 related medical conditions. Under this bill, it would be a civil
24 rights violation for a working woman to be fired or otherwise
25 discriminated against on the basis of pregnancy, childbirth, or
26 related medical conditions or because of breast-feeding or
27 expressing her milk during breaks.

28 The bill requires employers to provide reasonable break time
29 each day to an employee, as needed, for the employee to express
30 breast milk. The bill further requires employers to make reasonable
31 efforts to provide a location where the employee can express her
32 milk in private and imposes a fine for failing to do so.